

CHICAGO AND



TRANSPORTATION COMPANY

OFFICE OF THE SECRETARY

DIRECT DIAL NUMBER

9-249A011

RECORDATION NO

16591

FILED 1425

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September 5, 1989

INTERSTATE COMMERCE COMMISSION

File No. A-13265

Ms. Noretta McGee
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Ms. McGee:

Pursuant to Section 11303 (formerly Section 20c) of the Interstate Commerce Act, enclosed for recordation are counterparts of Lease of Railroad Equipment dated as of June 5, 1989 covering fifty-six (56) open top hopper cars listed in Schedule 1 attached to the Agreement.

The names and addresses of the parties to the transaction are as follows:

1. Chicago and North Western Transportation Company, Lessee, One North Western Center, Chicago, IL 60606.
2. Mr. Arthur R. Dubs, Lessor, c/o Pacific International Enterprises, Inc., 1133 South Riverside, #1, Medford, OR 97501.

Enclosed is our check for \$13.00 for your recording fee. Please retain one counterpart for your files and return the remaining counterparts showing your recordation data.

Sincerely,

Lisa M. Fanelli
Manager - Stock Operations

Enclosure

cc: R. L. Johnson
M. H. Shumate
K. H. Lange
J. G. Marks
Arthur Anderson & Co. (Attn: Joe Adams)

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MOTOR OPERATING UNIT

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Interstate Commerce Commission
Washington, D.C. 20423

11/2/89

OFFICE OF THE SECRETARY

Lisa M. Fanelli
Chicago & North Western Transp. Co.
One North Western Center
Chicago, Illinois 60606

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/6/89 at 12:05pm and assigned recordation number(s). 16591

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

SEP 6 1989-12 05 PM

INTERSTATE COMMERCE COMMISSION

TRIPLE NET

LEASE OF RAILROAD EQUIPMENT

THIS AGREEMENT, is made as of this 5th day of June 1989, between Arthur R. Dubs ("Lessor"), and Chicago and North Western Transportation Co. ("Lessee"). The parties wish to enter into this Agreement with respect to the lease of certain railroad equipment subject to the following terms and conditions.

NOW, THEREFORE, the parties mutually agree as follows:

I. LEASE OF EQUIPMENT. Lessor agrees to furnish and lease to Lessee and Lessee agrees to lease from Lessor upon the terms and conditions set forth herein a number of items of equipment of the type and description set forth in Schedule (1) hereto and by this reference made a part hereof. The scheduled items of equipment are hereinafter referred to collectively as "Cars" and each individual item of equipment is hereinafter referred to as a "Car".

The parties agree that Lessor shall at all times be and remain the owner of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with Lessor's ownership of the Cars and that it will take such reasonable action and execute such documents as may be necessary to preserve Lessor's rights in accordance with such understanding.

II. TERM OF LEASE AND RENT. This Agreement shall become effective as to any Car or Cars immediately from the date upon which Lessee accepts delivery of a Car until April 30, 2004. Lessor will, though, at its sole discretion, have the right to terminate this Lease with respect as to any or all Cars and take possession thereto after October 1, 2003 by so notifying Lessee in writing 60 days in advance of the date Lessor will exercise this option and on which Cars. Lessee shall pay rent for such Car at a rate of \$350.00 per month per car under a triple net lease, which rent shall be prorated for partial months.

III. DELIVERY, ACCEPTANCE AND INITIAL REPAIRS.

Delivery and Acceptance. Lessor shall deliver or cause the Cars to be delivered to MNVA shop in Minneapolis, MN (the "Turnover Point") where they will be jointly inspected immediately by Lessor and Lessee to assure they are in compliance with American Association of Railroads ("AAR") and Federal Railway Administration ("FRA") normal operating regulations. Cars in compliance will be made immediately available to Lessee at the Turnover Point, and Lessor will certify each of the Cars'

readiness for delivery to Lessee ("Delivery Readiness") by telex or fax to Lessee; when Lessee receives such certification for a Car, such Car will be deemed accepted by Lessee subject to the provisions of Paragraph 4. Cars not in compliance will be repaired by Lessor as expediently as possible at the turnover point. Upon completion of such repairs Lessor will send Lessee, by telex or fax, notice of such Car's Delivery Readiness and Lessee will immediately accept delivery of such Car unless, within five (5) days after receipt of notice of Delivery Readiness from Lessor, Lessee shall have notified the Lessor by telex or fax of its rejection of such Car which notice shall include the specific reasons for Lessee's rejection.

Lessor shall have the right, but not the obligation, to take whatever steps it deems appropriate to correct any defects in a Car, or to designate, subject to Lessee's acceptance, a substitute Car or substitute Cars.

The obligation of the Lessor to deliver the Cars shall be excused for any causes due to strikes, riots, storms, fires, explosions, acts of God, war, governmental action, or any other cause whether similar or dissimilar thereto which is beyond the reasonable control of the Lessor and/or the prior lessee, and in the event of a delay in delivery on account of such causes, Lessor shall deliver the Cars to Lessee as soon as reasonably possible thereafter.

IV. RAILROAD MARKINGS. At the time Lessor delivers a Car to the Turnover Point, and prior to any loaded or unloaded use of any Car by Lessee, Lessee shall cause such Cars 500 reporting marks to be removed and shall cause such Car to be remarked with Lessee's CNW reporting marks and the following reporting legend in letters not less than 1" in height "SUBJECT TO AN EQUIPMENT LEASE FILED UNDER SECTION 11303 INTERSTATE COMMERCE ACT". All such markings shall comply with applicable regulations. If during the continuance of this Agreement such markings shall at any time be removed or become illegible, wholly or in part, such markings will be restored or replaced at Lessee's expense. Lessee shall not place, nor permit to be placed, any additional lettering or marking of any kind upon the Cars other than Lessee's corporate logo, without Lessor's prior written consent.

V. RECORD KEEPING. At no cost to Lessor, Lessee shall cause to be prepared and filed all documents relating to the registration, maintenance, and operation of the Cars, including but not limited to: (i) AAR documents; (ii) registration in the UMLER and Official Railway Equipment Register; and (iii) as may be required by the ICC (Interstate Commerce Commission) and/or other regulatory agencies. Lessee shall, at its expense, and

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within ten business days of the execution of this document by all parties, cause this document do be duly recorded with the Interstate Commerce Commission under 49 U.S.C. 11303 and thereafter promptly provide a file-stamped copy of such document to Lessor as proof of such recordation. Notwithstanding the foregoing, Lessor shall provide to Lessee, if available and if requested, at no cost to Lessee, all mechanical records and other documentation required by Lessee to operate and maintain the Cars and satisfy the recording and filing requirements under this Agreement.

Lessee shall perform all record keeping functions relating to the use and operation of the Cars by Lessee and other railroads, such as car hire reconciliation, in accordance with the Interchange Rules and AAR railroad interchange agreements. All record-keeping performed by Lessee hereunder and a record of all payments, charges, car mileage, maintenance history, and correspondence related to the Cars shall be maintained in the same manner as is the case for Lessee's fleet and in a form suitable for inspection during normal business hours by Lessor from time to time and Lessee shall retain all such books and records, in either physical or computerized form, for a period of not less than three (3) years following the creation of such records. Lessor or its agent shall have the right at any time during normal business hours and upon reasonable notice to enter the premises of Lessee for the purpose of inspecting the records relating to the Cars. If after review by Lessor, Lessor desires copies of relevant documents, Lessee shall provide, at its expense and upon Lessor's reasonable request, copies of relevant records with respect to the Cars that are kept in the ordinary course of Lessee's business. Lessor shall keep any such records and the information therein confidential and shall not disclose such to any third person or entity without Lessee's express written consent.

Lessee shall maintain cumulative historical mileage and repair maintenance reports by Car and periodically, upon request from Lessor, supply Lessor with an updated copy, but in no event more than once per year.

VI. RENTAL RATE & USAGE. Rent payable by Lessee to Lessor hereunder shall be at a triple net rate of \$350.00 per month per Car, prorated for any partial months in accordance with Section II hereof. Each months rent shall be paid no later than 10 days after the beginning of each month, except that any rent that is prorated for partial months shall be paid no later than 10 days after the beginning of the month following the month of acceptance. With respect to each Car, this Agreement shall commence on the date upon which Lessee accepts delivery of such Car in accordance with the provisions of Section III hereof.

The Cars are being leased solely for use in the continental United States with incidental or occasional use in Canada permitted and primarily for the transportation of low sulphur coal and/or iron ore. It is understood that if cars haul iron ore, Lessee will insure they are not overloaded. ed.
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VII. REPAIR AND MAINTENANCE. Except as otherwise provided, Lessee shall, at its own cost and expense, maintain and keep the Cars in good order, condition, and repair, ordinary wear and tear excepted, suitable for their intended use and for use in interchange in accordance with the requirements of the AAR Interchange Rules, regulations of the United States Department of Transportation, the Interstate Commerce Commission, and other governmental authorities having jurisdiction over the Cars. Any replacement parts applied by Lessee in connection with its maintenance of the Cars shall be of a quality and type equivalent to the parts on the Cars at the time of delivery.

Lessee, at Lessee's expense, shall make, or cause to be made, all alterations, modifications, improvements or additions to the Cars necessary to comply with all applicable laws or regulations. Lessee shall not alter and/or modify any Car, without the written consent of Lessor. However, Lessee shall be permitted to make additions to the Cars which are readily removable without causing damage to the Cars without Lessor's consent. Lessee shall at its expense, remove all such removable additions and return the Cars to their previous condition before returning the Cars to Lessor. Any and all replacement parts and modifications shall constitute accessions to the Cars and shall become the property of Lessor. If Lessee makes any alteration and/or modification without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration, and for any costs reasonably incurred by Lessor to restore such to its condition prior to such alteration.

Lessee at Lessee's expense will during the term of this Agreement, cause each Car to be rehabilitated and re-painted once. The rehabilitation will include but not be limited to rehabilitating the truck centerplates, draft gears, safety appliances, and any body repairs required to maintain the cars in a condition suitable for the use intended. The re-painting will include complete sandblasting, and paint. Such rehabilitation and re-painting shall be performed in the manner and quality as Lessee would perform on its own coal Cars, or to the AAR Field Manual Rule 88 and 80 then current requirements, whichever is of a higher quality.

VIII. POSSESSION AND USE. So long as an Event of Default shall not have occurred and be continuing under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement. However, Lessee's rights shall, however, be subject and

subordinate to the rights of any secured party under any financing agreement previously entered into by Lessor in connection with the Cars.

Lessee agrees that to the extent it has physical possession and control of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which they may be located and in compliance with all lawful acts, regulations, rules, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any such rules, regulations, or orders in any reasonable manner at the expense of the contesting party.

Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement, provided however that this covenant shall not be deemed breached by reason of the attachment of:

- (i) The lien of Lessee's general mortgages to the Lessee's leasehold interest in the Cars;
- (ii) Liens for taxes, assessments or governmental charges or levies which are either not due nor delinquent which Lessee is Contesting in good faith, and;
- (iii) Interdetermined or inchoate materialmen's, mechanics, workmen's, repairmen's, or other like liens which are not delinquent or which Lessee is contesting in good faith.

Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, encumbrance, security interest, or claim if the same shall arise at any time during the term hereof. Lessee will in any event hold the Lessor totally harmless of any of the events described in sub-paragraphs 1, 2, and 3 above.

IX. INDEMNIFICATION AND INSURANCE. From the date upon which Lessee accepts delivery of each Car at the Turnover Point under Section III hereof until the termination of this Agreement with respect to each such Car, the possession, use, and operation of such Car shall be at the sole risk and expense of the Lessee. Lessee shall indemnify and save harmless the Lessor from and against all liability, cost and expense arising during the term of this Agreement with respect to each Car from (a) any and all loss or damage of or to the Car, usual normal wear and tear excepted, (usual wear and tear does not include substantial

damage occasioned by high sulfur or abrasive materials) and (b) any claim, cause of action, damages or liability (including reasonable attorney fees and expenses in connection therewith) that Lessor may incur in any manner by reason of its status as Lessor, which may arise in any manner out of, or as a result of, the use, maintenance, repair or operation of any Car or by reason of its condition (whether defects are latent, patent or discernible by Lessee), or as a result of claims for negligence or strict liability in tort. In consideration of Lessee's obligation to indemnify Lessor pursuant to this section, Lessor agrees to assign to Lessee any rights Lessor may have against any third party in connection with any matter related to such indemnity.

Lessee, while this Agreement is in effect with respect to any Car, shall at its own expense insure or self-insure and be fully responsible for all property, casualty and liability insurance on each Car, beginning upon delivery of Car by Lessor pursuant to Section III hereof, no matter where such Car is located, Lessee, at Lessor's request shall furnish Lessor with reasonable evidence of such insurance. To the extent Lessee obtains or provides such insurance, Lessor shall be deemed an insured party.

Lessor shall have the right to procure at its own expense, additional insurance (in excess of the AAR 107 compensation payable by Lessee for destroyed Cars as provided for at XII herein,) up to the current replacement value of each car and Lessee agrees to provide Lessor any reasonable material or information Lessor might require to do so.

Lessee further warrants that it has full corporate power to enter into this Agreement; the execution and delivery of the Agreement has been duly authorized, by all necessary corporation action of Lessee and, when executed and delivered by the Lessee, the Agreement will constitute a valid, legal and binding agreement, enforceable in accordance with its terms; except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and principles of equity; no approval is required by the Lessee from any governmental or public body or authority with respect to the entering into or performance of this Agreement; and the entering into and performance of this Agreement will not conflict with, or result in a breach of, the terms, conditions or provisions of any agreement or instrument to which the Lessee is a party or by which it or its property may be bound or conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulations, order, injunction, permit, franchise or decree of any court or governmental instrumentality.

Lessor shall not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the Cars,

however, such loss or damage shall be caused, or shall result. In addition to any other indemnity provided herein, the Lessee agrees to assume responsibility for, to indemnify Lessor against, and to save it harmless from, any such loss or damage or claim therefor.

X. ASSIGNMENT AND SUBLEASE. Lessee may not assign, or sublease Cars or this agreement without Lessor's prior written approval, which shall not be unreasonably withheld. Provided however, that Lessee shall have the right not more than 4 times during the term of this lease Agreement, to lease any or all of the Cars to any railroad organized under the laws of the United States of America or any State thereof, or the District of Columbia without Lessor's consent so long as such lease provides that the Cars will be operated and maintained in accordance with this Agreement, CNW's marks will not be removed from the Cars and such lease will be for a term not longer than six (6) months. Lessee will notify Lessor in writing of any such sublease. Lessor may assign or encumber the Cars, or assign his rights under this Agreement at his sole discretion, however Lessor shall remain obligated under this Agreement with regard to Lessee's quiet possession and use of the Cars so long as Lessee is not in default under this Agreement. No sale, transfer, sublease or assignment of this Agreement, or of the Cars, shall relieve Lessee nor Lessor from any of their respective obligations under this Agreement.

XI. EVENT OF SALE. In the event the Lessor shall receive from a qualified third party, a bona fide written offer to purchase not less than all the Cars, then Lessor, upon 20 days notice to the Lessee, shall have the right to conclude such sale. In such event, however, Lessee shall have a right of first refusal to meet the terms of such sale, provided Lessee notifies Lessor within 20 days of receipt of such notice of the terms of such offer, of Lessee's intention to meet the terms of such sale. In the event Lessor concludes a sale of the Cars to a third party, the terms of such sale shall be subject to this Agreement and the leasehold interests of the Lessee under this Agreement.

XII. LOSS OR DESTRUCTION OF CARS. The time, determinations, methods and amounts of payments to Lessor by Lessee for a Car that is lost, destroyed or damaged beyond repair shall be handled in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations - Freight. Lessee's rental obligation with respect to a Car which is so determined to be lost, destroyed, or damaged beyond repair shall cease on the date Lessee requests a depreciated value statement from Lessor. Payment for the foregoing settlement amounts shall be made as of

the next Rental Payment Date which is more than twenty (20) days after Lessee requests a Depreciated Value Statement from Lessor. Lessee will notify Lessor that a Car has been lost, destroyed, or damaged beyond repair within 30 days of such occurrence.

Lessee will at all times be responsible to Lessor for the collection from third parties and remittance to Lessor of all amounts for which such third parties may be liable to Lessee, directly or indirectly, by reason of the loss, destruction, or damage beyond repair of any Car while such Car is on the railroad tracks of the third party. Lessee shall immediately upon receipt forward to Lessor any such amounts received from third parties.

If a car should be damaged or destroyed, Lessor shall have the right, but shall not be obligated, to substitute another car of the same type, capacity and condition, in accordance with the provisions of Part III hereof.

XIII. TAXES AGAINST LESSOR OR CARS. The Lessee agrees to pay and to indemnify and hold the Lessor harmless from, all license and registration fees and sale, use, personal property, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever together with any penalties, fines or interest thereon imposed against the Lessor, the Lessee or the Cars or any part thereof by any federal, state, foreign or local government or taxing authority, during the term or in connection with the termination of this Lease, upon or with respect to the Equipment or any part thereof or upon the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition (except for any disposition by the Lessor other than a disposition occurring upon an Event of Default) thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease (excluding, however;

- (i) any taxes imposed by the federal government on, based on, or measured by the net income of the Lessor including but not limited to any franchise taxes, value added taxes or any other taxes in lieu of income taxes;
- (ii) any income, franchise taxes or value added taxes imposed by any taxing authority other than the federal government on, based on, or measured by, the net income of the Lessor which in the aggregate do not exceed the amount of any such taxes imposed by reason of this transaction which would be payable to the taxing authorities of the jurisdictions, other than the United States of America, in which the Lessor has its principal place of business assuming no allocation or apportionment to any other taxing authority, and;

(iii) any tax or similar charge included in the cost of any Car,

except to the extent that any of the foregoing events referred to in clause (i) through (iii) arose by virtue of a violation of any of Lessee's obligations hereunder); unless, and only to the extent and for the period that, any such tax, levy, impost, duty, charge or withholding is being contested by the Lessee in good faith and by appropriate proceedings (all such taxes, fees and charges as defined in this sentence being hereinafter referred to as the "Indemnified Taxes" or the "Taxes").

Any payment made by Lessee pursuant to this Section XIII shall reflect, on an after tax basis the net increase in Lessor's federal, state or local income taxes as a result of the inclusion in Lessor's income of any amount required to be paid by Lessee under this Section XIII. In case any report or return is required to be made with respect to any obligation of the Lessee under this Section or arising out of this Section, the Lessee will either prepare and file such report or return in such manner as will show the ownership of the Equipment in the Lessor and, upon reasonable request of the Lessor, send a copy of such report or return to the Lessor or will timely notify Lessor of such requirement and the Lessee will prepare such report or return for filing by the Lessor in such manner as shall be satisfactory to the Lessor. If claim is made against the Lessor for any Indemnified Taxes, the Lessor shall promptly notify the Lessee in writing. If reasonably requested by Lessee in writing, the Lessor shall, at Lessee's expense, take such action as the Lessee may reasonably request with respect to such asserted liability, provided that the Lessee furnishes an opinion of independent counsel, selected by the Lessee and satisfactory to the Lessor, to the effect that there is a reasonable basis for contesting such asserted liability. If Lessor elects to pay any tax required to be paid by Lessee hereunder (provided, however that Lessor is not required or obligated to pay such tax), Lessor shall pay such tax under protest, if reasonably so requested by Lessee and if such protest is necessary and proper. If payment is made by Lessor, Lessee shall reimburse Lessor for such payment on demand together with interest at the current prime rate for the number of days such payment is un-reimbursed by the Lessee and the Lessor shall, at the Lessee's expense, take such action as the Lessee may reasonably request to recover such payment and shall, if requested, permit the Lessee in the Lessor's name to file a claim or prosecute an action to recover such payment. If the Lessor shall obtain a refund of all or any part of such taxes, fees or other charges previously reimbursed by the Lessee in connection with any such contest or any amount representing interest thereon applicable to the amount paid by the Lessee of the period of such payment, the Lessor shall pay to the Lessee the amount of such refund and/or interest received by the Lessor

net of expenses, but only if no Event of Default, or event which with notice of lapse of time or both would constitute an Event of Default, shall have occurred and be continuing. All of the obligations of the Lessee under this Section with respect to any Indemnified Taxes imposed or accrued before the expiration or other termination of this Lease shall continue in full force and effect notwithstanding such expiration or other termination and are expressly made for the benefit of, and shall be enforceable by, the Lessor.

XIV. TERMINATION. At the expiration of this Agreement as to any Car, Lessee will surrender possession of such Car to Lessor by delivering such Car empty to Lessor at an interchange point on Lessee's railroad tracks designated by Lessor, free of charge to Lessor to the (east of the Missouri River) designated interchange point on Lessee's lines and free of car hire expense to Lessee. At expiration, Lessor at its expense shall cause Lessee's reporting marks to be removed from the Car prior to each Car's delivery off Lessee's lines, or off a third party maintenance shop directly connected to Lessee's lines. Lessee shall insure the Cars are returned free of refuse, and Lessee will remove its corporate logo at Lessee's expense, clean and suitable for the purpose originally intended, with all outlet gates in normal working order, meeting all AAR, FRA, and DOT federal safety rules and regulations and meeting all requirements for interchange service, including re-weighing if required as prescribed in the field manual of the AAR Interchange Rules, then current edition, or successor publication. Upon such delivery, Lessor and Lessee shall conduct a joint inspection of the Cars, and any disputes shall be settled by a third party jointly selected by Lessor and Lessee. In the event that a Car is not properly and promptly returned to Lessor, payment to Lessor will continue until such Car is returned or placed into storage at Lessor's instructions. In any event the Cars must be available to Lessor on Lessee's tracks no later than 30 days after expiration of this Agreement unless additional time is granted in writing by Lessor.

Upon expiration or termination of this Agreement and upon the prior written request of Lessor, Lessee agrees to provide free storage for any or all of the Cars for a period of (60) sixty days from the date of such expiration or termination, provided that Lessee shall have no responsibility for normal wear and tear to stored Cars, nor for acts of God. During this period no car hire or other charges will be due Lessor from Lessee. Nothing in this paragraph shall give Lessee the right to retain possession of any Car after expiration of this Agreement.

If Lessee or its assignee or sublessee fails to return any of the Cars in the manner provided by this paragraph or by paragraph XVI hereof, Lessee shall be liable to Lessor for post-termination rental in the amount of \$20 per day or fraction of a day for any

Car not so returned, in lieu of other rentals stated herein but in addition to any and all other remedies available to Lessor upon default or termination.

XV. INSPECTION. Lessor, or its Designee, upon reasonable notice, during normal business hours has the right to enter the premises of Lessee to inspect the Cars on line, as Lessor deems necessary. Lessee agrees to use its reasonable efforts to arrange for such inspections of any Cars that may be located on property not owned by Lessee. Any such inspections shall be at the sole expense and risk of Lessor and shall be conducted in a manner which will not disrupt the normal railroad operations of the Lessee.

XVI. DEFAULT. The occurrence of any of the following events shall be an Event of Default:

- (i) The nonpayment by Lessee of any sums required to be paid by Lessee within ten (10) days after receipt of written notice from Lessor that such payment is due and unpaid;
- (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within twenty (20) days after receipt of written notice from Lessor of such breach;
- (iii) A case shall be commenced under Subchapter IV of Chapter 11 of the bankruptcy Code (as such Subchapter IV is now in effect or hereafter may be amended or replaced), by or against the Lessee and, unless such petition or case shall have been dismissed, nullified or otherwise rendered ineffective (but then only so long as such ineffectiveness shall continue), (i) within 30 days after such case shall have been commenced, (A) all the obligations of the Lessee under this Agreement shall not have been duly assumed for the then unexpired term hereof in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such case in such manner that such obligations shall have, to the fullest extent permitted by law, the same status and priority as to payment as obligations incurred by such trustee or trustees which are entitled to payment as administrative expenses pursuant to the 11 U.S.C. 507 (a) (1) (as such section is now in effect or hereafter may be amended or replaced) and (B) all events of default under subparagraphs (a), (b) or (f) of this Section 16 shall not have been cured, and (ii) thereafter during the pendency of the case, the trustee or trustees appointed

in such case shall not cure in a timely fashion all other events of default under subparagraphs (a), (b), or (f) of this Section 16 which from time to time occur hereunder; or


- (iv) Any case or proceedings shall be commenced by or against the Lessee for any relief or adjudication under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension or the Board of Directors of the Lessee shall authorize the commencement of any such other case or proceedings, and if any such case or proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within 30 days after such case or proceedings shall have commenced; or the Lessee shall make an assignment for the benefit of creditors; or the Lessee admits in writing its unable to pay or is generally not paying its debts as they become due, and such admission, inability or failure shall continue for 30 days after notice thereof from the Lessor, or a trustee, custodian or receiver is appointed for the Lessee or for a major part of the property thereof and is not discharged within 30 days after such appointment; or
- (v) The levy, seizure, assignment, application or sale of substantially all of Lessee's property for or by any creditor or governmental agency if such actions would materially affect the interests of Lessor hereunder; or
- (vi) Any representation or warranty made by Lessee herein shall prove to have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of twenty (20) days after written notice of such default has been received by Lessee.


Upon the occurrence of any such Event of Default and so long as such Event of Default shall be continuing, Lessor may, at its option and to the extent permitted by law (including applicable sections of the Federal Bankruptcy Code):

- (vii) Terminate this Agreement; proceed by any lawful means to recover damages for a breach hereof and terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate and Lessee will within 10 days of default return the Cars to Lessor per Section XIV herein or if necessary Lessor may lawfully enter upon

any premises where the Cars are located and take immediate possession of them and henceforth hold, possess, and enjoy the same free from any right of the Lessee, provided that Lessor shall nevertheless have the right to recover from Lessee any and all expenses including attorneys fees it incurs in recovering the Cars or such rental amounts as under the terms of this Agreement may then be due or which may have accrued to the date on which Lessor took such possession; and/or,

- (viii) Proceed by any lawful means to enforce performance of this Agreement by Lessee. Lessee agrees to bear the costs and expenses, including without limitation reasonable attorney's fees, incurred by Lessor in connection with the exercise of its remedies pursuant to this section.

 XVII. WARRANTIES AND REPRESENTATIONS. Upon Lessee's acceptance of each Car pursuant to the provisions of Section III hereof, Lessee acknowledges that: Lessor makes no warranties or representations, express or implied, as to the condition, merchantability, or fitness for particular purpose of such Car, and except as provided in Paragraph III, Cars are Leased as is. Lessee hereby waives any claim it might have against Lessor that is incident to matters referred to in the preceding sentence. For so long as this Agreement shall be in effect and no Event of Default shall have occurred and be continuing, Lessor hereby assigns to Lessee any factory or dealer warranty, whether express or implied, or other legal right Lessor may have against the manufacturer in connection with defects in the Cars covered by this Agreement.

 XVIII. MISCELLANEOUS. A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not, without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder to any party, and any purported assignment in violation hereof shall be void. It is understood and agreed that Lessor may, in accordance with Section X hereof, assign this Agreement with respect to some or all of the Cars listed on any Schedules hereto to a third party (the "Lease Assignee"). Upon delivery of a notice of such assignment to Lessee, the term "Lessor" as used herein shall mean such Lease Assignee, provided however, that Lessor warrants that any Lease Assignee of this Agreement with respect to any of the Cars will subject such Cars to all the terms and conditions of this Agreement. Lessee agrees to give its consent and to acknowledge, upon receipt of notice of assignment, such assignment of this Agreement by Lessor.

B. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is hereby created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as lessee.

C. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power, or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any further exercise thereof or the exercise of any other right, power, or remedy.

D. This Agreement, and the provisions herein, shall be interpreted, construed and governed by the laws of the State of Oregon applicable to agreements entered into and wholly performed herein.

E. All notices hereunder made in writing, as opposed to telex, shall be deemed given when delivered personally or three days after deposit in the United States mail, postage prepaid, certified or registered, addressed to the other party as set forth below.

If to Lessor:

Arthur R. Dubs
c/o Pacific International Enterprises, Inc.
1133 S. Riverside #1
Medford, OR 97501

If to Lessee:

Vice President-Equipment and Customer Service
165 N. Canal Street
Chicago IL 60606

[Handwritten initials]

F. This Agreement represents the entire agreement, and shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

G. The headings of the various paragraphs of this Agreement are for convenience of reference only and shall not modify, define or limit or any of the terms or provisions hereof.

H. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

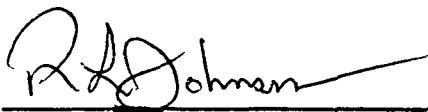
IN WITNESS WHEREOF, The parties hereto have executed this Agreement on the dates shown below to be effective as of the date first above written.

ARTHUR R. DUBS



C/O Pacific International
Enterprises, Inc.
1133 S. Riverside #1
Medford, Oregon 97501

Dated: June 5, 1989

By: 

VICE PRESIDENT-EQUIPMENT
& CUSTOMER SERVICE

Its: _____

Dated: May 10, 1989

SCHEDULE 1

RAILCARS DESCRIPTIONS

OWNED BY
ARTHUR R. DUBS

COAL RAILCAR DESCRIPTION

56 Coal Cars built 2/1979 by Greenville Steel Car Company:
Greenville, Pennsylvania. Cars began lease 1st quarter, 1979

DESCRIPTION - 4,000 cu. ft, capacity, 100 ton, bottom dump,
triple hopper cars, rotary coupler

OLD CAR NUMBERS - SOO 62327; SOO 62427 thru 62428; SOO 62430
thru 62474; SOO 62476 thru 62483; and SOO 62520

NEW CAR NUMBERS - CNW 870000 thru 870055

UMLER Values - \$33,943

56 Total Coal Cars as of April 4, 1989;
** *****

* Revised April 4, 1989

STATE OF Oregon)
COUNTY OF Jackson) SS

This instrument was acknowledged before me on this 5th day of June, 1989 by Arthur R. Dubs as an officer of PACIFIC INTERNATIONAL ENTERPRISES, INC.

Lileen C. Hough
Notary Public

(Notarial Seal)

My Commission Expires 7-26-93

STATE OF ILLINOIS)
COUNTY OF COOK) SS

This instrument was acknowledged before me on this 10th day of May, 1989, by R. L. Johnson as an officer of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY.



Lisa M. Fanelli
Notary Public

My Commission Expires Feb 19, 1990

CHICAGO AND



TRANSPORTATION COMPANY

OFFICE OF THE SECRETARY

DIRECT DIAL NUMBER

312/559-6158

November 1, 1989

Ms. Noretta McGee
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Ms. McGee:

Pursuant to Section 11303 (formerly Section 20c) of the Interstate Commerce Act, enclosed for recordation are five counterparts of a Lease of Railroad Equipment dated as of June 5, 1989 among Chicago and North Western Transportation Company and Arthur R. Dubs.

This Lease was originally sent to the ICC for recordation in September of this year along with a \$13.00 check (refer to attached letter and fee receipt), but the Lease was returned to me because it did not contain the required acknowledgements. I have since obtained acknowledgements and attached one to the last page of each Lease.

Please proceed with the recordation, retain one counterpart for your files and return the remaining counterparts showing recordation data to me.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lisa M. Fanelli".

Lisa M. Fanelli
Manager-Stock Operations

cc: R. M. Grossman
M. H. Shumate
K. M. Lange
J. G. Marski
Arthur Anderson & Co. (ATTN: Joe Adams)

csd11/35(1)

Chicago and North Western
Transportation Company
XXXXXXXXXX
Railway



August 30, 1994

File: A-13265
EOC: 0-079

One North Western Center
Chicago, Illinois 60606

Office of the Secretary
312.559.6156

Mr. Sidney Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423

RE: Lease of Railroad Equipment dated June 5, 1989 between Arthur R. Dubs (Lessor)
and Chicago and North Western Transportation Company (Lessee)

ICC Recordation No.: 16591

Dear Mr. Strickland:

In connection with the above agreements, please be advised that the name of Chicago and North Western Transportation Company was changed to Chicago and North Western Railway Company effective May 6, 1994, pursuant to the Certificate of Amendment of Restated Certificate of Incorporation of Chicago and North Western Transportation Company filed with the State of Delaware on May 5, 1994.

Sincerely,

A handwritten signature in cursive script, appearing to read "K. A. Dombrowski".

K. A. Dombrowski
Assistant Secretary

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

On this 30th day of August, 1994, before me personally appeared K. A. Dombrowski, to me personally known, who, by me being duly sworn, says that she is Assistant Secretary of Chicago and North Western Railway Company and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My commission expires: April 12, 1995

A handwritten signature in cursive script, appearing to read "Penny Menchey".

